

So Ordered.

Dated: November 24th, 2018



Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE:

KEELER'S MEDICAL SUPPLY,
INC.,

Debtor.

Case No. 17-01849-FLK11

**FINDINGS OF FACT &
CONCLUSIONS OF LAW RE:
CONFIRMATION OF CHAPTER
11 PLAN**

This matter came on for hearing on November 20, 2018 on the request of Keeler's Medical Supply, Inc., for confirmation of the Debtors' proposed Plan of Reorganization ("**Plan**") (Docket No. 130). The Court has

**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

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1 considered the Declaration of Charles Vetsch as well as any testimony elicited
2 or proffered without objection at the confirmation hearing. The only creditor
3 or party in interest that filed an objection to confirmation of the Plan was the
4 Internal Revenue Service. The Internal Revenue Service has withdrawn its
5 objection, as evidenced by the signature of its counsel on the Order
6 Confirming the Debtor's Chapter 11 Plan (subject to the provisions contained
7 in said confirmation order). Based upon the evidence, the Court hereby finds
8 and concludes as follows:

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15 *I. Findings of Fact*

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17 1. The Debtors gave proper notice of their Plan and the hearing on
18 confirmation of the Plan to creditors and parties in interest as required by
19 FRBP 2002, LBR 2002-1 and LBR 3018-1 as well as other applicable
20 provisions of the Bankruptcy Code and Federal Rules of Bankruptcy
21 Procedure.
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26 2. The following classes of claims are impaired under the Plan:

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28 Class 2: Priority Tax Claims
29 Class 3: Priority Wage Claims
30 Class 4: Secured Claim of the Internal Revenue Service
31 Class 5: Secured Claim of Yakima County
32 Class 6: Unsecured Claims
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1
2 3. The Debtors have properly filed a Report of Balloting and Ballot
3 Summary in each of their cases. The Report of Balloting and Ballot
4
5 Summaries indicate that:

6
7 3.1 Class 2 did not vote for or against the Plan.

8
9 3.2 Class 3 has voted against the Plan.

10
11 3.3 Class 4 did not vote for or against the Plan but has
12 consented to confirmation of the Plan.

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14 3.4 Class 5 did not vote for or against the Plan.

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16 3.5 Class 6 voted in favor of the Plan.

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18 4. No ballots other than those identified in the Report of Balloting
19 and Balloting Summary have been received by the Debtors.

20
21 5. One Hundred Percent (100%) of the creditors casting votes in
22 Class 6 voted in favor of the Plan.

23
24 6. The Plan has been accepted in writing by at least one non-insider
25 class of impaired creditors, as required by 11 U.S.C. §1129(a)(10).

26
27 7. The Plan complies with all provisions of Title 11 of the United
28 States Code as well as other applicable law.

1 8. No creditor or party in interest, other than the Internal Revenue
2
3 Service, has objected to confirmation of the Plan. Pursuant to FRBP
4
5 3020(b)(2), the Court finds the Plan has been proposed in good faith and not
6
7 by any means forbidden by law.

8 9. All payments made or promised by the Debtors under the Plan for
9
10 services or for costs and expenses in, or in connection with, the Plan and
11
12 incident to the case, have been fully disclosed to the Court and are reasonable
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14 and are hereby approved, or, if to be fixed after confirmation of the Plan, will
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16 be subject to approval of the Court. No party is issuing securities or acquiring
17
18 property under the Plan.

19 10. The Reorganized Debtor will continue to be owned by the
20
21 shareholders who owned the Debtor on the Petition Date after confirmation of
22
23 the Plan. However, under the Plan the Debtor has liquidated all of its assets
24
25 and will distribute those assets to creditors under the Plan. The shareholders
26
27 of the Debtor will not receive any distributions under the Plan.

28 11. After confirmation, the Debtor does not intend to employ any
29
30 individuals, including insiders.

1 12. With respect to each impaired class of claims described in the
2 Plan, the Plan will pay such claimants: (a) in the case of Class 4, the amount
3 agreed upon by the Debtor and the Class 4 Claimant; (b) in the case of Class 2,
4 3 and 5 one hundred percent (100%) of the principal balance of such claims,
5 over time, as more specifically described in the Plan; and (c) with respect to
6 Class 6, such funds as may remain after payment of Claimants in Class 1 – 5,
7 as provided in the Plan.
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10 13. The Debtor have prepared a liquidation analysis, which is
11 attached to the Debtor's approved Disclosure Statement. The liquidation
12 analysis demonstrates that in the event the Debtors were liquidated outside of
13 these proceedings, as opposed to receiving the distributions called for by the
14 Plan, that such creditors in classes 2, 3 and 5 would, more likely than not,
15 receive less than one hundred percent (100%) of the amount of their allowed
16 claims.
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19 14. The Court finds that creditors in Classes 2, 3 and 5 will receive
20 more under the Debtors' Plan than they would receive if the Debtors were
21 liquidated pursuant to the provisions of Chapter 7 of the Bankruptcy Code.
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1 15. Administrative Claimants in Class 1 will be paid in cash either:
2
3 (a) upon the Effective Date of the Plan (unless any particular Claimant agrees
4 upon a different or less favorable treatment); or (b) upon approval of such
5 administrative claimants' fees and costs as required by applicable Bankruptcy
6 law. Such treatment complies with the requirements of 11 U.S.C.
7
8 §1129(a)(9)(A).

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11 16. Other than Class 1 Administrative Creditors, Class 2 Priority Tax
12 Creditors and Class 3 Priority Wage Claimants, the Debtors do not have any
13
14 creditors with claims pursuant to 11 U.S.C. §507(a).

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17 17. The Debtors' approved Disclosure Statement describes the
18 Debtors' proposed operations under the Plan. The Debtor's Plan is a
19 liquidation plan. The Debtor does not propose any operations under the Plan
20 other than making the distributions called for by the Plan.
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23
24 18. Classes 1 and 6 are unimpaired or not entitled to vote on the Plan.

25
26 19. The Debtors are current in the payment of the quarterly fees
27 payable to the United States Trustee. The Plan provides for the payment of all
28 United States Trustee fees payable under 28 U.S.C. §1930. To the extent any
29 quarterly fees remain owing upon confirmation, the Debtor shall file such
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1 operating reports as are required and pay such fees within ten (10) days of the
2 Effective Date.
3

4 20. All payments to insiders of the Debtors during the course of the
5 case have been disclosed.
6

7 21. Classes 2, 3 and 5 (“Non-Accepting Classes”) have neither
8 accepted nor rejected the Plan. As a result, the Plan does not comply with 11
9 U.S.C. §1129(a)(8). The Court finds that the treatment of the Non-Accepting
10 Classes under the Plan is fair and equitable for the following reasons:
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12
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14 21.1 The Plan provides that creditors in the Non-Accepting
15 Classes will retain any security which secures such creditors’ claims until such
16 claims have been paid in full;
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19 21.2 The Plan provides for the payment of one hundred percent
20 (100%) of the principal amount of such claims in the Non-Accepting Classes
21 over time; and
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25 21.3 The Plan provides for interest payments to holders of
26 claims in the Non-Accepting Classes until such claims have been paid in full
27 in accordance with the terms of the Plan.
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1 22. The Effective Date of the Plan is the day that is fourteen (14)
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3 days after the date the order confirming the Plan is entered on the Court's
4 docket.

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6 23. Substantial Consummation of the Plan will occur upon the
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8 making of the first payment to a creditor in Class 2 or 3 according to the terms
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10 of the Plan.

11 II. *Conclusions of Law*
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13 Based upon the foregoing findings of fact, the pleadings filed in this
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15 case and the testimony and other evidence provided at the confirmation
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17 hearing, if any, the Court concludes that:

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19 A. The requirements for confirmation of the Plan imposed by the
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21 Bankruptcy Code, Federal Rules of Bankruptcy Procedure and other
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23 applicable law, including the requirements of 11 U.S.C. §1129 have been met.

24 B. The Plan should be confirmed.

25
26 C. To the extent that the above entered findings of fact are, in fact,
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28 conclusions of law, such findings are hereby incorporated into these
29
30 conclusions of law and should be denominated as such.

1 D. The provisions of Chapter 11 have been complied with and the
2 Plan has been proposed in good faith and not by means forbidden by law.

3
4 E. Any and all payments for which Bankruptcy Court approval is
5 required, including authorization required by 11 U.S.C. §§327 and 330, shall
6 remain subject to Bankruptcy Court approval notwithstanding confirmation of
7 the Plan.
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11 F. The Debtors have disclosed the identity and affiliations of all
12 parties who are to serve as officers and directors under the Plan. The Debtors
13 have disclosed the identity of all insiders who will be paid a salary or
14 consulting fees under the Plan. The Debtors' disclosures satisfy the
15 requirements of 11 U.S.C. §1129(a)(5).
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20 G. No governmental regulatory commission is required to approve
21 the Plan or the terms of the Plan.
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24 J. The Debtors' Plan satisfies the requirements of 11 U.S.C.
25 §1129(a)(7) in that each impaired class that has not accepted the Plan will
26 receive value, as of the Effective Date of the Plan, that is not less than the
27 amount such claimant would receive if the Debtors were liquidated under
28 Chapter 7 of the Bankruptcy Code.
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1 K. The only Classes entitled to vote on the Plan who have not
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3 accepted the Plan are the Non-Accepting Classes. However, the Plan is fair
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5 and equitable with respect to the treatment of the Non-Accepting Classes
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7 pursuant to 11 U.S.C. §1129(b)(2)(A). As a result, the Plan can be confirmed
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9 notwithstanding the provisions of 11 U.S.C. §1129(a)(8).

10 L. Administrative Claims described by 11 U.S.C. §503(b) and 11
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12 U.S.C. §507(a)(2) are provided for as required by 11 U.S.C. §1129(a)(9).

13 M. At least one impaired class of claims has accepted the Plan and
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15 the Plan therefore meets the requirements of 11 U.S.C. §1129(a)(10).

16
17 N. Confirmation of the Plan is not likely to be followed by the
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19 liquidation, or the need for further financial reorganization of the Debtors.

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21 O. The Effective Date of the Plan will be the date that is fourteen
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23 (14) days following entry of the order of confirmation on the Court's docket.

24 P. The Debtors are authorized and directed to begin consummation
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26 of the Plan on the Effective Date, including through the execution, ratification,
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28 and implementation of all loan and security documents authorized or
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30 contemplated by the Plan.

1 Q. Substantial Consummation of the Plan will occur upon the
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3 making of the first payment to a creditor in Class 2 or Class 3 according to the
4 terms of the Plan.
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6 R. Creditors and parties in interest were given proper notice of the
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8 confirmation hearing.
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10 S. The Objection to confirmation of the Plan filed by the Internal
11 Revenue Service was addressed by the Debtors adding the following language
12 to order confirming the Plan, which order has been agreed to by the Internal
13 Revenue Service:
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17 5.1 The Plan contemplates that the Debtor will file an
18 objection to the IRS Proof of Claim and that distributions to the
19 IRS under the Plan will be based upon the Court's resolution of
20 the claims litigation or alternately upon agreement of the
21 Debtor and the IRS.

22 5.2 The Debtor and the IRS have agreed that the IRS will
23 accept the sum of \$570,991.79 (which is the principal balance
24 of the IRS Class 4 Claim) as its sole payment under the Plan.
25 The Debtor shall pay the IRS the sum of \$570,991.79, from
26 funds held by the Debtor, no later than thirty (30) days from the
27 Effective Date. This sum shall constitute the Class 4
28 Distribution called for by paragraph 6.02 of the Plan.

29 5.3 In addition to the Class 4 Distribution, Vetsch
30 Investments, LLC, which owns the real property located at
31 2001 West Lincoln Avenue shall distribute \$100,000.00 to the
32



1 IRS within twenty-four (24) months of the Effective Date. The
2 proceeds shall be paid to the IRS from the sale of the Lincoln
3 Property (**"Secondary IRS Payment"**). The Secondary IRS
4 Payment shall be in addition to the amounts Vetsch Investments
5 has agreed to make available for Class 2 and Class 3 creditors
6 under the Plan.

7 5.4 Upon making the Class 4 Distribution the IRS shall place
8 any additional taxes owed by the Debtor and any taxes assessed
9 individually against Charles & Cherie Vetsch (to the extent
10 such taxes resulted from the non-payment of taxes by the
11 Debtor)(collectively **"Set Aside Taxes"**) in an uncollectable
12 status. No collection activity shall be taken on the Set Aside
13 Taxes against either the Debtor or Mr. & Mrs. Vetsch so long
14 as the IRS receives the Secondary IRS Payment within twenty-
15 four (24) months of the Effective Date. If the IRS does not
16 receive the Secondary IRS Payment within twenty-four (24)
17 months, the IRS shall be free to take such additional collection
18 activity as is allowed by applicable non-bankruptcy law. If the
19 Debtor substantially defaults on the plan payments due to the
20 IRS, the outstanding balance is immediately due and payable.
21 Payment shall be for the entire amount owed to the IRS under
22 the plan. The IRS may collect these unpaid tax liabilities
23 through the administrative collection provisions of the Internal
24 Revenue Code.
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26 **[Intentionally Left Blank]**
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1 T. With the addition of the language described in paragraph S,
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3 above, the objection to confirmation of the Internal Revenue Service is hereby
4 withdrawn.
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8 / / / End of Order / / /
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10

11 Presented By:
12
13

14 /s/ Roger W. Bailey
15 ROGER W. BAILEY (WSBA 26121)
16 JOSHUA J. BUSEY (WSBA 34312)
17 Bailey & Busey PLLC
18 Counsel for Keeler's Medical Supply, Inc.
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